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| 09/715,456      | 11/17/00    | CIOTIC               | E                   |

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QM01/0607

| EXAMINER    |
|-------------|
| ELOSHWAY, C |

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3751     |              |

DATE MAILED: 06/07/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/715,456

Applicant(s)

CIOTIC, EGOR

Examiner

Charles R. Eloshway

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-18 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

DETAILED ACTION

*Election/Restrictions*

1. Applicant's election with traverse of Species I in Paper No. 3 is acknowledged. The traversal is on the ground(s) that fig. 3 (Species II) is not patentably distinct from Species I and that both species should therefore be examined together. Fig. 3 was identified as a separate species from the embodiments shown in figs. 1 and 2 and in fig. 4 because of, *inter alia*, the shape of the chute and the location of the vent opening. To the extent that the claims directed to Species also define the features shown in fig. 3 (Species II), they will be examined together in this action.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 11 and 15-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3.

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***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-10 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, "means for providing a toilet seat" is indefinite for two reasons. First, it is not clear whether the claim requires the toilet seat itself or simply the structure that enables a toilet seat to be connected to the "portable frame." Second, the metes and bounds of "providing" are indefinite. Also, it is not entirely clear whether applicant intends to invoke 35 U.S.C. 112(6). If the phrase is intended to require only the toilet seat, it becomes simply a structural limitation (the toilet seat itself) with no associated function.

In claims 5 and 6, "hose means" presumptively invokes 35 U.S.C. 112(6), but no function is associated with either "hose" or "means." "Hose means" will therefore be interpreted simply as "hose." Claims 5 and 6 are also indefinite as to the "means for generating" a "positive" and "negative pressure." The only

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disclosed structure for moving the air is a "fan." While a fan may generate both a slight vacuum pressure on the upstream side and a positive pressure on the downstream side of the fan blades, it does not alternatively produce only a positive or negative pressure as claimed and disclosed.

In claim 7, line 2, "included" should be "includes." Also, "opening means" lacks a function associated with either "opening" or "means" and, as such, will be interpreted simply as "opening."

Claim 8 is indefinite as to the phrase "means for providing a chute" for the same reasons that "means for providing a toilet seat" was held to be indefinite in claim 1.

Claim 10 is indefinite based on applicant's identification of it as readable on the elected species. Claim 10 requires the "chute" to be "conical." This is only shown in non-elected Species III (fig. 4). Because applicant believes the claim to be readable on the elected embodiment and Examiner has provided evidence casting doubt on such a reading, the metes and bounds of the claim are indeterminate. See M.P.E.P. § 821. Claim 10 will not be further treated on the merits for this reason.

Claim 12 is indefinite for two reasons. First, the phrase "means for providing a seal" is indefinite for the same reasons "means for providing a toilet seat" and "means for providing a

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chute" were determined to be indefinite. Second, the "seal" feature is only found in non-elected Species III (fig. 4). Thus, the metes and bounds of the claim are indeterminate for the same reasons explained in the rejection of claim 10 above, and claim 12, like claim 10, will not be further treated on the merits.

In claim 14, the meaning of "attached distally" is unclear.

#### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 8, 9, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of DE 1,111,353.

Regarding claims 1, 2, and 8, Holley teaches a "portable frame" and a "toilet seat" (14) with a "chute." Although Holley lacks a "means for venting," such features are commonly provided on both flush-type toilets and portable or dry closets, as

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evidenced by DE '353. In view of DE '353, it would have been obvious to the ordinary artisan to adapt the Holley apparatus to have a "means for venting" in order to remove foul odors.

Regarding claim 3, DE '353 teaches that the "means for venting" moves the foul odors to a "distal location," i.e., one outside the toilet seat itself. On the other hand, it would have been an obvious expedient to pipe the vented odors to a more remote location as desired.

With respect to claim 4, Official notice is taken of the fact that toilet ventilation fans, like that taught by DE '353, are either AC or DC powered. The use of either would have therefore been an obvious design expedient.

Regarding claim 9, Holley teaches that the "chute" is more "conical" than "cylindrical." In the absence of some evidence to the contrary, simply changing the shape from conical to cylindrical would have been an obvious design expedient.

With respect to claims 13 and 14, DE '353 teaches that the fan may be attached to the seat frame structure (fig. 4) or "attached distally" (fig. 2). The location of the point of attachment on the Holley apparatus would have thus been an obvious matter of design choice in view of this teaching.

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7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of DE '353 as applied to claim 3 above, and further in view of Agelatos et al.

Agelatos teaches that toilet ventilation fans may be attached to the toilet seat via a flexible hose (40). In view of Agelatos, it would have been obvious to the ordinary artisan to adapt the Holley apparatus to have a fan attached via a flexible hose to the toilet seat to allow the seat to move while still providing the desired ventilation.

As to the "means for generating positive" and "negative pressure," DE '353 and Agelatos both teach the use of fans. Inasmuch as a "fan" is the only "means for urging" or "generating" that applicant has disclosed (as explained in the rejection under 35 U.S.C. 112(2) above), both references suggest the claimed features.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of DE '353 as applied to claim 3 above, and further in view of Lee, III.

Although DE '353 is apparently silent as to an "opening" in the "toilet seat," Lee teaches that such features are well known in toilet ventilation. It would have been obvious to the ordinary artisan, in view of Lee, to provide "openings" in the



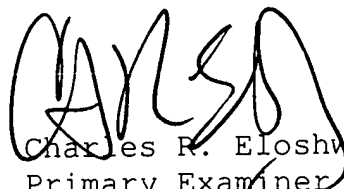
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Holley seat for receiving foul odors from the interior of the chute and the toilet bowl.

*Prior Art*

9. Other references cited teach toilets having features common to the disclosed invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R. Eloshway whose telephone number is (703) 308-0104. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0975.

  
Charles R. Eloshway  
Primary Examiner  
Art Unit 3751

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June 5, 2001